

31143. Misbranding of butter. U. S. v. John Newton Hall (Lexington Ice & Creamery Co.). Plea of guilty. Fine, \$50. (F. & D. No. 39791. Sample No. 43426-C.)

This product was short of the declared weight.

On November 4, 1937, the United States attorney for the Southern District of Mississippi filed an information against John Newton Hall, trading as Lexington Ice & Creamery Co., at Lexington, Miss., alleging shipment on or about May 10, 1937, from the State of Mississippi into the State of Louisiana of quantities of butter which was misbranded. The article was labeled in part: "Clear Brook Creamery Butter [or "Country Roll Creamery Butter] * * * Distributed by Wilson & Co."

It was alleged to be misbranded in that the statements, (carton of a portion) "Net Weight 1 Pound," (labels of individual cubes in said cartons) "1/4 Lb. Net Weight," and (wrappers of country roll butter) "1 Lb. Net Weight," were false and misleading since the cartons and wrappers contained smaller amounts of butter than those declared on the labels. A portion of the article was alleged to be misbranded further in that it was food in package form and the quantity of contents was not plainly and conspicuously marked on the outside of the package.

On November 6, 1941, the defendant entered a plea of guilty and the court imposed a fine of \$50.

31144. Adulteration of frozen eggs. U. S. v. 300 Cans of Frozen Eggs. Decree entered finding portion of product adulterated and ordering its condemnation and destruction; and finding remainder unadulterated and ordering its release. Government's motion to amend decree denied. (F. & D. No. 43044. Sample No. 29784-D.)

Examination of this product showed the presence of decomposed eggs.

On July 11, 1938, the United States attorney for the Eastern District of Pennsylvania filed a libel against 300 cans of frozen eggs at Reading, Pa., alleging that the article had been shipped in interstate commerce on or about June 4, 1938, by Armour & Co. from Springfield, Mo.; and charging that it was adulterated in that it consisted in whole or in part of a filthy, decomposed, and putrid animal substance. The article was labeled in part: "Armour's Star Quality Cloverbloom Frozen Eggs."

On August 3, 1938, Armour & Co., claimant, filed a petition praying that the Government show cause why the libel should not be dismissed. This petition was denied and on November 14, 1938, claimant filed an answer denying that the article was adulterated as charged in the libel. On January 16, 1939, the claimant filed an amended answer to the libel admitting that 7 cans of the product contained a filthy, decomposed, and putrid substance, but denying that the remaining 293 cans contained such filthy, decomposed, and putrid substance.

On January 17, 1939, judgment was entered finding 7 cans adulterated and ordering their condemnation and destruction; and finding that the remaining 293 cans were not adulterated and ordering their delivery to the claimant.

On September 8, 1939, the Government's petition to amend the decree was denied with the following opinion:

KALODNER, Judge. "On January 11, 1938, a libel was filed by the United States of America, seeking the condemnation and forfeiture of 300 cans of frozen eggs, which were owned by the claimant and had been shipped in interstate commerce. Adulteration of the entire 300 cans was alleged in the libel.

"Orders were issued by this court to take samples, and a joint inspection was made of every one of the 300 cans by the Government's inspector and a representative of the claimant. The Government inspector found that only 7 of the 300 cans inspected were objectionable and that the 293 remaining cans were pure.

"Thereafter the claimant's amended answer to the libel admitted that the 7 cans were impure and denied (in consonance with the findings of the Government inspector) that the remaining 293 cans were impure.

"Subsequently a consent decree was entered by this court on motion of the United States of America adjudging the 7 cans to be adulterated and the remaining 293 cans to be pure. The decree ordered the condemnation and forfeiture of the 7 adulterated cans and the return of the 293 pure cans to the claimant.

"Thereafter the United States of America filed a petition to amend the aforementioned decree, asserting that it did not conform to the pleadings; that since the libel averred the entire 300 cans to be adulterated in whole or in part, and the claimant's amended answer admitted the shipment to be adulterated in part, that the decree should have (1) ordered the condemnation of the entire 300 cans